Supreme Court, U.S.
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No. 90-1253

In The

Supreme Court of the United States

October Term, 1990

SUSAN J. FASSE and ELIZABETH FASSE,

Petitioners,

vs.

PATRICIA HODGSON,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Georgia

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I.

Whether the posting of an arbitration award in the county courthouse pursuant to Fulton Superior Court Local Rule 1000, after actual notice of the arbitration hearing was provided to Petitioners, and after Petitioners failed in their attempt to obtain a continuance, and after Petitioners failed to appear and participate in the arbitration hearing and failed to demand a trial *de novo*, after the hearing, satisfies due process and equal protection requirements under the Fourteenth Amendment of the Constitution of the United States.

II.

Whether Petitioner Susan Fasse, who had actual notice of an arbitration proceeding, can argue error as to the resulting arbitration award, when she failed to appear for the arbitration hearing, failed to obtain a continuance, failed to follow up on her Motion for Continuance, failed to inquire as to the entry of an arbitration award, and failed to make a request for a jury trial following entry of the arbitration award.

TABLE OF CONTENTS

Page

Questions Presented i

Table of Authorities iii

Constitutional Provisions and Regulations Involved 1

Statement of the Case 1

Summary of Argument 5

Argument 6

Conclusion 11

Appendix, Part I, August 16, 1989, Affidavit of H. Brian Sams..... App. 1

Appendix, Part II, Fulton Superior Court, Atlanta Judicial Circuit, Local Rule No. 1000.. App. 4

TABLE OF AUTHORITIES

Page

CASES

Bay Side Fish Flower Company v. Gentry, 297 U.S. 422, 56 S.Ct. 513 (1936) 9

Davis v. Gaoni, 260 Ga. 450, 396 S.E.2d 218 (Ga. 1990) 11

Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972) 9

Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706 (1983) 7

Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 705 S.Ct. 652, 94 L.Ed. 865 (1949) 7, 8

Tulsa Professional Collections Services v. Pope, 45 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988) 7

U.S. v. Maryland Savings – Share Ins. Corp., 400 U.S. 4, 91 S.Ct. 16 (1970) 11

OTHER AUTHORITIES

Article VI, Section IX, Paragraph I, Constitution of the State of Georgia 1983 .....1, 10

Fulton County Superior Court Local Rule 1000 (Atlanta, Georgia Judicial Circuit) ..... *passim*

O.C.G.A. § 9-11-58 3

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED IN THE CASES

Article VI, Section IX, Paragraph I, Constitution of the State of Georgia 1983:

> The judicial system shall be administered as provided in this Paragraph. . . . (F)rom time to time . . . , the Supreme Court shall, with the advice and consent of the council of the effected class or classes of trial courts, by order adopt and publish uniform court rules . . . which shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions. . . .

STATEMENT OF THE CASE

Petitioners desire this Court to review the unanimous per curiam affirmance, without opinion, of the Georgia Supreme Court.

An adequate exposition of the facts is essential to the Court's determination of this matter. Petitioners have not fully disclosed all of the pertinent facts necessary for the Court's determination, thus Respondent submits her own statement of material facts for consideration by this Court.

This case has been pending as an active civil matter since 1984. (R3-8, Complaint). The original claim in the main action was for the conversion of several pieces of heirloom silver owned by the Respondent. On March 22, 1985, the Honorable Clarence Cooper, Judge of the Superior Court of Fulton County, entered a default judgment for Respondent against Petitioner Susan Fasse, hereafter ("Petitioner"), on the issue of liability. This judgment was entered after Petitioner failed to timely answer the

Respondent's Complaint. (R12-74, Default Judgment). However, due to the extraordinary pretrial maneuverings of the Petitioner, no hearing was held concerning the issue of damages until February, 1989.

At no time prior to the arbitration hearing scheduled for October 21, 1988, did Petitioner seek to set aside or vacate the default judgment entered by the trial court. Despite repeated pretrial delay efforts by Petitioner, Respondent was finally able to obtain a hearing on the issue of damages through the Fulton County Arbitration Program pursuant to Fulton Superior Court Local Rule 1000 scheduled for October 21, 1988. Petitioner sought a continuance for that arbitration hearing from the trial court which was granted. (R25-260, Order). The ground for the continuance was ostensibly the medical illness of the Petitioner. (R24-256, Motion for Continuance).

The arbitration hearing was subsequently rescheduled for February 3, 1989. Less than five (5) days prior to the scheduled arbitration, Petitioner untimely filed a motion for continuance of the arbitration with the trial court. (R26-261, Motion for Continuance). Again, the ground for the continuance was ostensibly the medical illness of the Petitioner. However, the trial court denied Petitioner's second request for a continuance of the arbitration hearing. (App. 1, Affidavit of H. Brian Sams). Petitioner is simply wrong in her contention that the second continuance was granted.

On February 3, 1989, the issue of damages was presented to a panel of arbitrators of the Fulton County Civil Arbitration Program. Respondent's counsel, H. Brian Sams, was in contact with the Office of Civil Arbitration

for the Superior Court of Fulton County before the February 3, 1989, arbitration hearing and was told by the Administrator of that office that Petitioner's counsel had not filed a motion for continuance with that office as required under Local Rule 1000. (App. 2) Mr. Sams also spoke with Stephanie Davis, Judge Cooper's law clerk, at or about this time. Ms. Davis stated that Petitioner's motion for continuance had been denied by the trial court. (App. 2)

On the day of the arbitration hearing, Petitioner and her counsel, Thomas V. Cassidy, failed to appear. Mr. Sams spoke with the Administrator's office at the Fulton County Civil Arbitration Office and was informed that it had not been contacted by Petitioner or her counsel. The motion for continuance having been improperly filed, no hearing on the motion having been scheduled or sought, and the motion having been denied by the trial court, Respondent presented her case to the arbitrators who then issued an award for Respondent pursuant to Local Rule 1000. The award was published on the seventh floor of the Fulton County Superior Court Building on the bulletin board where such awards are normally posted pursuant to Local Rule 1000(14).

Pursuant to O.C.G.A. § 9-11-58, and Local Rule 1000, the judgment for damages was presented with the arbitrators' award attached and was then entered by the trial court, and filed in the office of the Clerk of the Superior Court of Fulton County, on March 7, 1989, after the expiration of thirty days from the date of entry of the arbitrators' award. (R28-267, Judgment).

Contrary to Petitioner's contention, neither Petitioner nor her attorney had contact with the arbitration office on the date of the arbitration hearing. Petitioner did not appear at the arbitration hearing which occurred on February 3, 1989. Further, the Petitioner did not appear to ascertain the result of the arbitration hearing; nor did she file a demand for jury trial from the non-binding award that was entered the day of the arbitration. Finally, the Petitioner did not appeal from the judgment entered on March 7, 1989, by the trial court. Petitioner did not file her motion to set aside until approximately five months after the entry of the money judgment, and approximately four years after the entry of the judgment as to liability.

Moreover, Petitioners' lack of diligence regarding their legal affairs is not limited to the main action. The companion case of *Elizabeth Jane Fasse v. Patricia B. Hodgson,* is yet another example. There, the matter was ordered to arbitration by the trial court. Petitioner Elizabeth Fasse (Susan Fasse's mother and also represented by Thomas V. Cassidy) received actual notice of the arbitration hearing. Yet, without explanation, neither she nor her counsel bothered to attend the hearing.

In both cases, Petitioners failed to appeal the entry of judgment within the time provided by law. Instead, after the expiration of several months, Petitioners filed their motions to set aside the respective judgments. (R30-277). Upon hearing, and after consideration of all the evidence, the trial court entered an order denying Petitioners' motions to set aside. (R30-350). Petitioners subsequently appealed to the Supreme Court of Georgia.

On May 21, 1990, oral argument was had in the cases which had been consolidated on appeal before the Supreme Court of Georgia. Upon hearing, the Supreme Court entered a per curiam opinion affirming the judgment of the lower court, in which all justices concurred. Petitioners subsequently filed a motion for reconsideration which was denied by the Supreme Court of Georgia on November 7, 1990.

SUMMARY OF ARGUMENT

Petitioners' failure to exercise due diligence in pursuing and defending their cases has resulted in their present predicament. At every step of the judicial process, Petitioners have shown a blatant disregard for the rules of Court and have failed to safeguard their rights. Rather than any constitutional infirmity in Fulton Superior Court Local Rule 1000, the harm claimed by Petitioners is the product of their own failure to appear at the arbitration hearing after notice, and subsequent failure to make timely inquiry in order to demand a trial *de novo*.

The due process rights of notice and an opportunity to be heard were provided Petitioners under the compulsory, non-binding arbitration of Local Rule 1000. Petitioners do not dispute having notice prior to the arbitration, but state that the notice was constitutionally insufficient as to the posting of the arbitration award after the hearing. Due process requires notice of the pendency of the action – in this case, the scheduling of the arbitration hearing. This is quite different from the notice required regarding a post proceeding award.

Petitioners' arguments regarding equal protection also lack merit. Local Rule 1000 was enacted by the Georgia Supreme Court in 1985, and is rationally related to the goal of "speedy, efficient, and inexpensive resolution of disputes". There is no impermissible classification which is arbitrary or vague as to Petitioners or any class of civil litigants in Fulton County.

ARGUMENT

Any harm suffered by Petitioners resulted not from a violation of any constitutionally protected right, but rather from Petitioners' own failure to protect their rights and diligently defend their cases.

Petitioner Susan Fasse failed to appear for the arbitration hearing, failed to schedule a hearing on her Motion for continuance, failed to follow up on her Motion for Continuance, failed to inquire as to the entry of an arbitration award, and failed to file within thirty days after the arbitration award, a request for jury trial. Petitioner failed to do anything regarding the judgment until her motion to set aside, which came about five months after the judgment for damages was entered.

Petitioner does not dispute that she had notice of the arbitration hearing, nor that this hearing provided her with an *opportunity* to be heard. Rather, she argues that the posting of the arbitration award after she failed to exercise her opportunity to be heard denied her due process of law.

The posting procedure under Local Rule 1000 satisfies due process requirements under the Fourteenth Amendment to the Constitution of the United States. This Court has consistently held that due process, as mandated by the Fourteenth Amendment, requires that an individual be given notice and an opportunity to be heard before state action can deprive one of a property interest. *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950).

Petitioners contend that the posting of arbitration awards under Rule 1000 does not satisfy due process requirements under the United States Constitution and they cite several cases of this Court supposedly in support of this proposition. The cases cited by Petitioners deal specifically with the issue of notice as an element of due process. Respondent agrees that *"prior to an action* that will affect an interest in life, liberty or property protected by the due process clause, a state must provide *'notice of the pendency in the action and afford them the opportunity to present their objections.'* " *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314, 705 S.Ct. 652, 94 L.Ed. 865 (1950); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706 (1983). (Emphasis added).

There is no correlation between the facts of this case and the holdings in the cases raised by Petitioners. The only common denominator between this case and the fact patterns in the cases cited by Petitioners is that notice given in each was by publication. On this fact alone, Petitioners hope to successfully carry their due process argument. Both *Mullane* and *Mennonite* as well as *Tulsa Professional Collections Services v. Pope*, 45 U.S. 478, 108

S.Ct. 1340, 99 L.Ed.2d 565 (1988), require adequate notice "prior to an action." This is necessary to give the parties a fair opportunity to protect their interests.

Petitioners do not contest actual notice of the time, date, and place of the pending arbitration proceeding. Petitioners' argument pertains only to a *post* proceeding publication of the arbitration award. What the Fourteenth Amendment mandates is reasonable notice of the *"pendency of the action." Mullane, supra.* Petitioners were afforded ample "opportunity to be heard." What is apparent is that they failed to exercise that opportunity.

The requisite mandates and guidelines of due process "notice" were provided Petitioners under Local Rule 1000. Notice of the pending arbitration hearing was provided by publication in the Fulton County Daily Report, the county legal organ, as well as registered mail sent to counsel of record. The first arbitration hearing was scheduled for October 21, 1988, but was rescheduled for February 3, 1989, upon Petitioner's Motion for Continuance filed with the Superior Court. Petitioner's request for a continuance prior to the original, as well as rescheduled, arbitration hearings indicates that she, in fact, had notice of the proceeding. Thus, it simply cannot be said that Petitioner was not provided with notice and an opportunity to be heard prior to any state action involving her property interest.

Petitioner's request for a continuance prior to the February 3, 1989, hearing was denied by the trial court. Petitioner did not inquire as to the outcome of her Motion for Continuance or whether the arbitration hearing went forward or ascertain the result of the hearing. This is in

light of the fact that Rule 1000 unequivocally states that arbitration awards will be entered the day of the hearing and will be published to the parties through the posting mechanism in the Superior Court. Local Rule 1000(14). Petitioner knew, or should have known, that under Local Rule 1000 the judgment would be forthcoming if she did not act as required under the Rule and demand a jury trial within thirty days of the entry of the arbitration award. Local Rule 1000 clearly states that a ruling will be entered the same day as the arbitration and that a judgment by consent is proper if no jury demand is filed within thirty days.

The provisions of Local Rule 1000 which set forth when a civil action may be submitted for arbitration do not deny Appellants' equal protection of the laws as required under the Fourteenth Amendment of the United States Constitution. The Due Process Clause of the Fourteenth Amendment denies to states the power to place persons by statute or rule into different classes on the basis of criteria wholly unrelated to the object to the statute or rule. *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972). A particular classification made by the state is not objectionable as arbitrary merely because any inequality actually results. *Bay Side Fish Flower Company v. Gentry*, 297 U.S. 422, 56 S.Ct. 513 (1936).

Local Arbitration Rule 1000 of Fulton County, Superior Court (Atlanta Judicial Circuit) provides:

> All civil actions filed in seeking primarily money damages of $25,000 or less shall be required to go through compulsory but non-binding arbitration. *Any party to an action not otherwise qualifying may request arbitration when it*

> *is not for the purpose of delay;* the trial judge to whom the case has been assigned may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration; all cases alleging malpractice against health care providers shall be excluded from arbitration unless requested by a party or ordered by the Court.
>
> Local Rule 1000(1). (Emphasis added).

It is consistent with the Petitioners' prior conduct throughout the history of these cases, that they omit from their Brief (p. 39), the underlined portion of the above quotation which is determinative of their argument.

Local Rule 1000 was adopted by the Georgia Supreme Court on April 13, 1988. Article VI, Section IX, Paragraph 1 of the Georgia Constitution of 1983 contains the mandate that the Supreme Court of Georgia adopt and publish Uniform Rules provide for the "speedy, efficient, and inexpensive resolution of disputes and prosecutions." Local Rule 1000, which provides that civil actions involving primarily money damages up to $25,000 or in an unspecified amount be referred to compulsory but non-binding arbitration, was adopted as part of this mandate.

A review of the full body of Local Rule 1000 reveals no impermissible classification which denies Petitioners or others similarly situated equal protection of the laws. All civil litigants in Fulton County are provided with an opportunity under Rule 1000 to seek arbitration. Petitioners' argument that Rule 1000 is arbitrarily discriminatory and vague is nonsensical in light of the fact that Rule 1000 allows "any party to an action not otherwise qualifying may request arbitration when it is not for the purpose of delay. . . . " Local Rule 1000(1).

The party not seeking arbitration is not left without remedy under this Rule. A party who is unhappy with the case proceeding to arbitration, or the results handed down by the arbitrators, is free to file a demand for a trial *de novo* at any point within thirty days of the filing of the arbitration award. Local Rule 1000(16). Thus, no individual is denied an opportunity to have his "day in court" by virtue of the case having proceeded to arbitration under this Rule.

Normally, a legislative classification will not be set aside if any state of facts rationally justifying it is demonstrated or perceived by the courts. *U.S. v. Maryland Savings – Share Ins. Corp.*, 400 U.S. 4, 91 S.Ct. 16 (1970). Under Local Rule 1000, the opportunity for litigants to have a case submitted to arbitration, either of their own initiative or through judicial discretion, is rationally related to the goal of "speedy, efficient, and inexpensive resolution of disputes and prosecutions." The Supreme Court of Georgia recently considered the constitutionality of Local Rule 1000 against an equal protection attack and found the argument to lack merit. *Davis v. Gaoni*, 260 Ga. 450, 396 S.E.2d 218 (Ga. 1990).

CONCLUSION

The material issue in this case is whether the entry of judgment subsequent to the issuance of an arbitration award pursuant to Fulton Superior Court Local Rule 1000, and of which Petitioners had prior notice yet failed to appear or subsequently protect their rights, violated either due process or equal protection rights under the

Fourteenth Amendment. Petitioners have failed to prove the violation of a constitutionally protected right. Petitioners have not fulfilled their responsibilities to the judicial process in the litigation. At every turn they failed to abide by legitimate rules of Court and have ignored the requirements of the judicial process. Petitioners were not denied due process of law as they were provided actual notice of the arbitration hearing; nor does Local Rule 1000 violate equal protection rights of Petitioners as no impermissible classification has been shown to exist. Thus, the judgment of the trial court denying Petitioners' Motion to Set Aside and the per curiam affirmance without opinion by the Supreme Court of Georgia should be affirmed.

Accordingly, the Petitioners' prayer for a writ of certiorari to review the decision of the Supreme Court of Georgia in this case should be denied by this Honorable Court.

RESPECTFULLY SUBMITTED, this 6 day of March, 1991.

MOFFETT AND HENDERSON, P.C.
Attorneys for Respondent

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APPENDIX

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	:	
Plaintiff,	:	CIVIL ACTION FILE NUMBER: D-14463
v.	:	
SUSAN FASSE,	:	
Defendant.	:	

AFFIDAVIT

STATE OF GEORGIA
COUNTY OF FULTON

Personally appeared before me, the undersigned officer duly authorized to administer oaths, H. BRIAN SAMS, who after being duly sworn, states and deposes upon oath as follows:

1.

My name is H. BRIAN SAMS. I am over eighteen (18) years of age and the matters stated herein are of my personal knowledge. This Affidavit is given in support of the Plaintiff's Brief in Opposition to Defendant's Motion to Set Aside Judgment in the above-styled matter.

2.

I am a duly licensed, practicing attorney-at-law in and for the State of Georgia. I am a partner with the law firm of Moffett and Henderson, P.C. In that capacity, I represent the Plaintiff in the above-styled lawsuit.

3.

As one of the attorneys for the Plaintiff, I was responsible for presenting Plaintiff's case before the Panel of Arbitrators on February 3, 1989.

4.

On or about February 3, 1989, I called the office of the Civil Arbitration Program and spoke with Kim Warden who told me that no motion for continuance of the hearing had been filed as is required by Local Rule 1000.

5.

On February 3, 1989, I again spoke with Kim Warden's office, wherein I was informed that no contact had been made with that office by Defendant or her counsel.

6.

Prior to the hearing, I was informed by Judge Cooper's office that the motion for continuance had been denied.

7.

On April 1, 1988, while at the Fulton County Courthouse waiting to receive the arbitrator's decision in *Elizabeth Jane Fasse v. Pat Hodgson*, Case #26523, I was confronted by Mr. Sallee in the jurors waiting room on the fourth floor of the Fulton County Courthouse. Mr. Sallee said he came down to the courthouse in response to a call he received from Lee Lawson's office to see what

he could do, even though he had withdrawn as counsel, after Mr. Cassidy failed to appear in this arbitration hearing as well. Mr. Sallee told me that Mr. Cassidy had five DUI offenses and that he had represented Cassidy on his 3rd, 4th, and 5th DUI offenses, and that Cassidy was ordered not to leave the state. Mr. Sallee also stated that Mr. Cassidy was supposed to go into rehabilitation for drinking in the near future, although he didn't know the specific dates.

8.

Later, in May of 1988, Mr. Sallee telephoned me and told me that the state bar was investigating Mr. Cassidy.

Further Affiant sayeth not.

This 16th day of August, 1989.

/s/ H. Brian Sams (SEAL)
H. Brian Sams

Sworn to and subscribed before me,
this 16th day of August, 1989.

/s/ Suzanne Lane
Notary Public
My Commission Expires: ___

My Commission Expires December 3 1989

Fulton Superior Court
Atlanta Judicial Circuit
Local Rule No. 1000

CIVIL ARBITRATION

1.

All civil actions filed and seeking primarily money damages of twenty-five thousand ($25,000) dollars or less shall be required to go through compulsory but non-binding arbitration. Any party to an action not otherwise qualifying may request arbitration when it is not for the purpose of delay; the trial judge to whom the case has been assigned may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration; all cases alleging malpractice against health care providers shall be excluded from arbitration unless requested by a party or ordered by the Court.

2.

Upon filing the complaint with clerk, the docket clerk shall stamp all cases, including service copies, with an ad damnum of twenty-five thousand ($25,000) dollars or less with the date and time for arbitration, except medical malpractice actions against health care providers.

3.

The Court Administrator shall schedule and set dates for arbitration hearings and shall furnish such dates to the docket clerk to assign on a basis of the order of filing;

the Court Administrator shall set such arbitration dates not less than 180 days subsequent to filing and as close to such period as is reasonable and practical so that arbitration hearings shall be held approximately 180 days after filing.

4.

The Court Administrator or his designee shall determine the number of cases to be set on a date and during each period during such date; in accordance with such schedule, the docket clerk shall assign cases to the periods 9:00 A.M., 10:00 A.M., 11:00 A.M., or 2:00 P.M. in the sequence of their filing.

5.

The Court Administrator or his designee shall arrange for places for arbitration hearings in the courthouse or adjacent thereto for each hearing date; the locations of such arbitration hearings will be posted daily in the same places that notices of the presiding judge are displayed.

6.

Lawyers willing to serve as arbitrators will so notify the Court Administrator (or designee) by means of a written notice which will indicate years of trial experience and any training or experience in arbitration. Lawyers without training/experience in arbitration will be required to complete a basic seminar prior to arbitrating cases. The Court Administrator (or designee) will compile

two lists of arbitrators: Lawyers with any trial experience in five consecutive years and all other lawyers willing to so serve. Such lists shall be updated annually.

7.

An arbitration panel shall consist of the Chief Arbitrator, who shall preside, and two arbitrators; the Chief Arbitrator shall be randomly selected from the list of lawyers with five consecutive years of trial experience. All arbitrators are to be selected and assigned randomly to a panel.

8.

The scheduling of a case for arbitration hearing shall not remove the case from assignment to a judge, discovery, motions practice or regular court procedures. From the time of filing until the arbitration date, parties may carry on discovery; all discovery disputes and other motions shall be determined by the judge to whom the case has been assigned in the regular practice under the uniform local rules; discovery or motions pending shall not be a grounds for the removal of a case from an arbitration date; a continuance from arbitration may only be granted by the judge to whom the case has been assigned for legal excuse or good cause shown. Any discovery motions not previously ruled upon prior to the Friday before the arbitration hearing date, shall be deemed waived unless presented by the movant to the presiding judge for determination on such date and the presiding judge shall enter such order as is appropriate

after hearing the motion. Such motions are limited to five minute oral argument per side.

9.

If the case is settled prior to the arbitration date, the counsel for the parties shall notify not only the calendar clerk of the Judge to whom the case has been assigned but also the Court Administrator or his designee. The Court Administrator shall schedule sufficient arbitration panels on each date to handle the remaining arbitration cases.

10.

On the arbitration date, the Court Administrator or his designee shall call the calendar of the arbitration cases at each preset time and shall assign such cases to an arbitration panel as such panels become available.

11.

The arbitration panel shall swear witnesses and receive evidence; the rules of evidence shall be the same as followed in equitable proceedings or at temporary restraining order hearings, except as otherwise specified herein. Thirty (30) days prior to the arbitration hearing date, each party must specify in writing and provide copies of all documents to be introduced in evidence:

a. Police, fire or accident reports;

b. Medical reports, hospital records, or similar documents;

c. Medical bills;

d. Lost wages, lost profits;

e. Property repairs bills, estimates for repairs;

f. Business records;

g. Correspondence;

h. Ordinances, rules, or regulations;

i. Contracts, invoices, demand letters, notes, or negotiable instruments.

The opposing party must, by written demand made at least ~~twenty~~ (20) days prior to the arbitration date, state for which document he or she will require live testimony for purposes of cross-examination or of attacking its authenticity. If the arbitrators decide that such live testimony is unnecessary for cross-examination, then the party requiring such witness to be in attendance rather than allowing the document shall be liable for such person's witness fee and travel expenses. Documents unobjected to prior to the twenty (20) days shall be deemed authenticated but subject to objections as to admissibility at the time of the hearing. Parties are free to make stipulations or to waive any rules of evidence by agreement for purposes of such arbitration hearing only. Failure to serve such service copies in timely fashion prior to the hearing will require such party to have the documents authenticated as provided by law at the time of the hearing unless all parties agree to waive the service requirement.

12.

At the arbitration hearing, the Chief Arbitrator shall rule on all objections, motions and admissions of

evidence; the Chief Arbitrator may confer with the other arbitrators prior to making any rulings but is not required to do so.

13.

Arbitration hearings are intended to be brief evidentiary outlines of the case and not formal trials. Each side will be limited to a five (5) minute opening statement unless there is a conflict of interest between the parties of such side, in which event each party with a conflict of interest may make a separate opening of five (5) minutes; closing argument shall be fifteen (15) minutes per side unless there is a conflict of interest between the parties of such side, in which event each party with a conflict of interest may make a separate argument of ten (10) minutes.

14.

At the close of the arbitration hearing, the arbitrators shall confer and return a written award for one side or the other which shows the damages, if any awarded, and which shows any dissent. A simple majority of the arbitrators is required to return an award. The award is published to the parties, and the written award filed with the Court Administrator or his designee on the day of the hearing. No written findings of fact and conclusions of law are required. The judge to whom the case has been assigned shall not be advised of the award unless agreed to by all parties until after verdict.

15.

Arbitration hearings are not officially reported; counsel, at his or her own expense, may engage a private court reporter to record the proceedings.

16.

Either party may file a demand for trial within thirty (30) days of the filing of the arbitration award with the Court Administrator or his designee who shall make a notation and entry of the date of filing the award and of the trial demand; the demand for trial shall contain the style of the case, the case number and a demand for jury or non-jury trial; filing such demand for trial will entitle all parties to a *de novo* trial of all issues of fact or of law which were raised or could be raised in the arbitration hearing; such case will be tried before the judge to whom the case has been assigned in the ordinary procedure and course of time as if no arbitration hearing had been held; arbitration proceedings shall not delay or impede the normal trial of such case.

17.

Failure or refusal to file within thirty (30) days a demand for trial by all parties shall constitute a waiver of trial by jury or non-jury and be deemed a consent to the arbitration award; after the expiration of such thirty (30) days without the filing of a demand, any party may move for the entry of a consent judgment and dismissal with prejudice based upon the arbitration award.

18.

Where a party, after demand for trial, tries the case to a judge or jury and does not substantially improve said party's position, then the trial judge has the discretion to tax the arbitration panel's fees against said party's; for purposes of this rule, substantially improving a party's position shall mean either (a) reversal of the award, or (b) increase or decrease of the award by 15% or more depending upon whether the party demanding trial is a plaintiff or a defendant.

19.

For purposes of taxing an arbitration panel's fees, it shall be determined by dividing the total dollar amount paid to the arbitrators who heard this case by the total number of cases decided by such arbitration panel on that date.

20.

Arbitrators shall be paid two hundred ($200) dollars each for a full day's work and one hundred ($100) dollars if all work is concluded prior to 12.00 noon; each arbitrator shall sign at the conclusion of the day a statement as to the time served. Any lawyer serving as arbitrator may waive such compensation and, at the end of the year, he and his firm will be publicly recognized for all such public service contributed during such calendar year.

21.

No arbitrator may serve more than four (4) times during any one calendar year.

22.

If the Court Administrator or his designee receives two or more complaints as to an arbitrator's conduct from another arbitrator, a party or counsel, then inquiry shall be made to the other arbitrator or arbitrators; if two or more complaints are made, the Court Administrator or his designee shall notify said arbitrator in writing of the charges and ask if he or she wishes a hearing; if a hearing is requested, it shall be held before a panel of arbitrators selected in the normal fashion and evidence of the conduct presented; if the charges are found justified or if no hearing is requested, the lawyer's name shall be stricken from the arbitration rolls.